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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RENE M., a Person Coming Under the Juvenile Court Law.	B238929 (Los Angeles County Super. Ct. No. FJ49300)
THE PEOPLE, Plaintiff and Respondent, v. RENE M., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Robin Miller Sloan, Judge. Affirmed as modified.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that appellant Rene M. committed assault by means of force likely to cause great bodily injury in violation of Penal Code section 245, subdivision (a)(1), a misdemeanor, assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1), a felony, and vandalism causing damage under $400 in violation of Penal Code section 594, subdivision (a), a misdemeanor. The court found that appellant was a person described by Welfare and Institutions Code section 602, adjudged him to be a ward of the court, and placed him home on probation.

Appellant appeals from the orders sustaining the petition and adjudging him to be a ward of the court, contending that there is insufficient evidence to support the juvenile court's finding that he committed two assaults. We affirm the juvenile court's orders.

Facts

On July 25, 2011, about 11:00 p.m., Eli Selkin heard noise outside his house in Montebello. He went downstairs and saw two teen-aged boys on his patio. One of the boys was 15-year-old appellant, who was a friend of Selkin's son, F. Selkin told the boys to leave. They moved into the yard. Selkin followed and again told them to leave. Appellant replied that he did not have to leave.

Selkin threatened to call police on his cell phone if the boys did not leave. The boys moved to another area of the yard, where they had placed a large bottle of vodka on a chair. Appellant said, "I don't fucking care if you call the police, I don't have to leave." Selkin started dialing the police on his cell phone. The other boy knocked the cell phone out of Selkin's hand.

Selkin bent over toward the vodka bottle, intending to pour it out to keep it away from the boys. As Selkin was bringing the bottle up, appellant punched him in the back part of his side. Selkin was able to pick up the bottle, which was fairly full and heavy. The two boys were trying to grab the bottle. Appellant pushed Selkin and said, "Give me the fucking bottle of vodka." Selkin threw the bottle to the ground, hoping to break it. The bottle did not break.

Selkin picked up the bottle to throw it again. Selkin's son, F., jumped on him from behind, then slid down his arm as he swung the bottle and smashed it on some concrete. F. was apparently cut by the bottle.

F. went into the front yard and laid down. Selkin followed him. F. told Selkin, "You cut me." F. then punched his father in the nose.

Selkin then looked for appellant and the other boy, and saw that they were still in the backyard. He began looking for his cell phone, and told the boys that he was going to call the police. Appellant replied, "I don't fucking care if you call the police. We don't have to leave." Selkin walked the boys through the yard toward the main house, and the boys started to leave. Selkin went to check on his son, F.

After checking on F., Selkin went back into his house. There, he used the house phone to call the police. Selkin looked out the window and saw appellant coming back toward the house, carrying a skateboard. Appellant slammed open the front door with the skateboard. Selkin was able to force appellant back out the door. Selkin told appellant that he was on the phone with the police. Appellant replied, "I don't give a shit if you are on the phone with the police. Fuck you. You hurt [F.]" As Selkin was walking appellant to the door, appellant swung his skateboard at Selkin and hit him in the rib cage. Selkin walked back into the house to make sure he could close the door.

As soon as Selkin closed the door, appellant smashed at the door with the skateboard. Appellant's blow shattered the glass in one of the panes in the door. The wheel of the skateboard came through the opening. Selkin told appellant that the police were coming. Appellant left and was across the street when police arrived.

Montebello Police Department Officer Kenny Benitez found appellant and his skateboard nearby. Appellant appeared intoxicated and complained of pain in his ankle and foot. Officer Benitez observed that Selkin had a nosebleed and redness in the rib cage area. Selkin stated that he also had bruising to his side.

Discussion

1. Sufficiency of the evidence

Appellant contends that the juvenile court erred in denying his motion to dismiss the petition based on insufficiency of the evidence. Specifically, he contends that there is insufficient evidence to show that his punch to Selkin's side involved force likely to cause great bodily injury or to show that the skateboard was a deadly or dangerous weapon. We see no error. We see substantial evidence to support the juvenile court's findings.

In ruling on a minor's motion to dismiss a petition, the juvenile court must "weigh the evidence then before it," evaluate the credibility of witnesses, and determine whether the case against the minor was proved beyond a reasonable doubt. (Welf. & Inst. Code, § 701.1; *In re Andre G.* (1989) 210 Cal.App.3d 62, 66; *In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.)

We review a juvenile court's ruling on a motion to dismiss to determine if there is substantial evidence to support the offense charged in the petition. (*In re Andre G., supra*, 210 Cal.App.3d at p. 65; *In re Man J.* (1983) 149 Cal.App.3d 475, 482.) Under the substantial evidence test, we '"must review the whole record in the light most favorable to the judgment below to determine whether it discloses *substantial evidence* - that is, evidence which is reasonable, credible, and of solid value - such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Cuevas* (1995) 12 Cal.4th 252, 260-261.) This same standard applies in determining the sufficiency of the evidence to support the true finding of a juvenile court. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

The standard of review is the same when the prosecution relies mainly on circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment. (*In re George T.* (2004) 33 Cal.4th 620, 631.)

"If we determine that a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt, the due process clause of the United States Constitution is satisfied [citation], as is the due process clause of article I, section 15, of the California Constitution." (*People v. Osband* (1996) 13 Cal.4th 622, 690.)

a. Force likely to cause great bodily injury

The use of one's fist may produce force likely to cause great bodily injury. (*People v. Wingo* (1975) 14 Cal.3d 169, 176; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) """Whether a fist would be likely to produce such [great bodily] injury is to be determined by the force of the impact, the manner in which it was used and the circumstances under which the force was applied." [Citation.]"' (*People v. White* (1961) 195 Cal.App.2d 389, 392.)

Appellant contends that Selkin was unsure of where the punch even landed, and had at most redness in the general area where Selkin believed the punch landed. He further contends that Selkin suffered no injury at all and so there is no evidence that appellant used force likely to produce great bodily injury. To support his contentions, appellant relies on five cases in which the use of a fist to inflict force actually caused substantial injury. (*People v. Armstrong* (1992) 8 Cal.App.4th 1060; *In re Nirran W.* (1989) 207 Cal.App.3d 1157; *People v. Chavez* (1968) 268 Cal.App.2d 381; *People v. White, supra,* 195 Cal.App.2d 389; *People v. Pierre* (1960) 178 Cal.App.2d 585.)

A conviction for assault by means of force likely to cause great bodily injury does not require actual injury. (*People v. Griggs* (1989) 216 Cal.App.3d 734, 739-740.) The requirement is that the force be *likely* to produce great bodily injury. (*In re Nirran W., supra,* 207 Cal.App.3d at pp. 1161-1162.)

Here, there is evidence from which the juvenile court could reasonably infer that the force used by appellant was likely to produce great bodily injury. Appellant hit Selkin from behind, as Selkin was returning to an upright position after bending over and

picking up the heavy glass vodka bottle. Selkin described the blow as being harder than the later blow with the skateboard. This surprise blow could easily have knocked Selkin off-balance and caused him to fall onto either the bottle, the chair on which it had been sitting or both, and seriously injure himself. (See *People v. Covino* (1980) 100 Cal.App.3d 660, 667-668 [upholding a finding of force likely to cause great bodily injury where there was very slight injury resulting from the defendant's attempt to choke the victim]; see also *People v. Wingo, supra,* 14 Cal.3d at p. 177, fn. 9 [listing cases "closely approaching the lesser end of the scale of conduct under [Penal Code] section 245(a)" including swinging a coin belt at victims but missing, a single punch to the victim's eye, reaching over the head of two or three people to hit victim with beer bottle, chewing a finger and causing it to be bent, striking victim with fist, then accidentally falling on victim and breaking his leg, and hitting victim on head four times with empty beer can].)

Thus, there was sufficient evidence to support a reasonable inference that appellant used force likely to cause great bodily injury. "Even if different inferences can reasonably be drawn from the evidence, we cannot substitute our own inferences or deductions for those of the [juvenile] court." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1373.)

b. Deadly or dangerous weapon

"As used in section 245, subdivision (a)(1), a 'deadly weapon' is 'any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.' [Citation.] Some few objects, such as dirks and blackjacks, have been held to be deadly weapons as a matter of law; the ordinary use for which they are designed establishes their character as such. [Citations.] Other objects, while not deadly per se, may be used, under certain circumstances, in a manner likely to produce death or great bodily injury. In determining whether an object not inherently deadly or dangerous is used as such, the trier of fact may consider the

nature of the object, the manner in which it is used, and all other facts relevant to the issue. [Citations.]" (*People v. Aguilar, supra,* 16 Cal.4th at pp. 1028-1029.)

Appellant contends, correctly, that his skateboard was not a deadly weapon as a matter of law. He further contends that he did not use his skateboard in a manner capable of causing and likely to cause death or great bodily injury. He points out that he swung the skateboard only once, did so while he was close to Selkin (which he apparently believed limited the amount of force generated) and did not aim at Selkin's head. He points out that Selkin described the pain as minimal, causing only a bruise. Officer Benitez saw redness to the rib cage area. We do not agree.

The skateboard was two and a half to three feet long. Appellant swung it at the door hard enough to shatter a window in the door. Thus, appellant was swinging the skateboard with considerable force, sufficient to cause great bodily injury. (See *People v. Jaramillo* (1979) 98 Cal.App.3d 830, 835, 837 [wooden stick 18 to 20 inches long and one inch in diameter used to hit children on the arms and buttocks, causing swelling and bruising, was used as a deadly weapon].)

2. Maximum term of confinement

At the time of the disposition hearing, appellant was in his father's physical custody. The juvenile court ordered appellant home on probation. The court specified a maximum term of confinement. Appellant contends that because he was not removed from his parent's physical custody, the court's specification of a maximum term of confinement was unauthorized and should be stricken. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541-542.)

Respondent agrees that when a minor is left in the custody of his parents, the juvenile court is not required to specify a maximum term of confinement. If the court does, the term has no legal effect and need not be stricken. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573-574.) However, respondent does not object to this Court ordering the maximum term stricken. In the interests of clarity, we will strike it.

Disposition

The maximum term of confinement is ordered stricken. The court's orders are affirmed in all other respects.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.